

CHAPTER 4  
DISCIPLINE AND HEARING PROCEDURE  
[Prior to 6/15/88, see Real Estate Commission[700] Ch 4]

**193E—4.1(543B) Discipline and hearing procedure.** The Iowa real estate commission has authority derived from Iowa Code chapter 543B, entitled “Real Estate Brokers and Salespersons,” and from Iowa Code chapter 272C, entitled “Continuing Professional and Occupational Education,” to impose discipline for any violation of these two chapters, or the rules promulgated thereunder.

**193E—4.2(543B) Method of discipline.** The Iowa real estate commission has authority to impose, after proper procedures have been initiated and followed, the following disciplinary penalties:

1. Revocation of license.
2. Suspension of license until further order of the commission or for a specified period.
3. Nonrenewal of license.
4. Prohibit permanently, until further order of commission or for a specified period, the engaging in specified procedures, methods or acts.
5. Probation.
6. Require additional education or training.
7. Require or order a physical or mental examination.
8. Issue citation, warning or reprimand.
9. Impose civil penalties not to exceed \$1,000.
10. Such other sanctions allowed by law as may be appropriate, or any combination of the above penalties as the commission may choose.

**193E—4.3(543B) Discretion of commission.** The following factors are among those which may be considered by the commission in determining the nature and severity of the disciplinary sanction to be imposed against a particular licensee or groups of licensees.

1. The relative seriousness of the violation as it relates to assuring the citizens of this state professional competency.
2. The facts of the particular violation.
3. Number of prior violations.
4. Seriousness of prior violations.
5. Whether remedial action has been taken.
6. Such other factors as may reflect upon the competency, ethical standards and professional conduct of the licensee.
7. The impact of a particular activity upon the public.

**193E—4.4(543B) Confidentiality of investigative files.** Complaint files, and investigation files, and all other investigation reports and other investigating information in the possession of the commission or its employees or agents which relates to licensee discipline shall be privileged and confidential, and shall not be subject to discovery, subpoena, or other means of legal compulsion for their release to any person other than the licensee and the commission, its employees and agents involved in licensee discipline, or be admissible in evidence in any judicial or administrative proceeding other than the proceeding involving licensee discipline. However, a final written decision and finding of fact of the commission in a disciplinary proceeding shall be public record, including orders, assurance of voluntary compliance and dismissed complaints.

Nothing in this rule shall prohibit access to information pursuant to Iowa Code chapter 2C.

This rule is intended to implement Iowa Code section 272C.6(4).

**193E—4.5(543B) Proceedings.** The proceeding for revocation or suspension of a license to engage in real estate practices or to discipline a person licensed to practice the real estate profession or the denial of a license shall be substantially in accord with the following procedures which are an elaboration of or in addition to the procedures stated in Iowa Code sections 543B.35 and 543B.36.

This rule is intended to implement Iowa Code section 272C.5(2) “c.”

**193E—4.6(543B) Investigating committee.** The commission may appoint an investigating committee of two to five commission members for the purpose of conducting investigations pertinent to the business of the real estate commission including investigating and reviewing complaints related to licensee discipline. At the request of the investigating committee, the commission may expand the size of the investigating committee at any time to facilitate the resolution of a particular case.

**193E—4.7(543B) Form and content of the written complaint.** A complaint shall be made in writing and shall be signed by complainant or an authorized representative of the complainant. The complaint may be in the form of a letter or affidavit or it may be made using an official complaint form which may be obtained from the commission office upon request. A written complaint shall contain the following information:

1. The full name, address and telephone number of the complainant.
2. The full name, address and telephone number, if known, of the respondent.
3. A concise statement of the facts which clearly and accurately apprise the commission of the allegations against the respondent.

**193E—4.8(543B) Place and time of filing.** The complaint may be delivered personally or by mail to the executive secretary of the commission at the office of the commission. Timely filing is encouraged to ensure the availability of witnesses and to avoid initiation of an investigation under conditions which may have been substantially altered during the period of delay.

**193E—4.9(543B) Receipt of complaints and initiation of investigations.** When the commission receives a complaint pursuant to Iowa Code section 543B.34, or initiates a complaint on its own motion, the complaint shall be reviewed by the executive secretary.

**4.9(1)** If the complaint is a verified, written complaint, which together with evidence presented with the complaint makes out a prima facie case of a violation of a law within the investigative jurisdiction of the commission, the executive secretary shall refer the complaint to the investigating committee.

**4.9(2)** If the complaint does not meet the criteria set forth in the preceding sentence, the executive secretary may either refer the complaint to the investigating committee or, if in the opinion of the executive secretary the complaint is frivolous or clearly outside the jurisdiction of the commission, the executive secretary may decline to pursue the complaint further. If the executive secretary does not pursue the complaint, the complainant shall be informed by letter containing a statement specifying the reasons for rejection. If a complainant objects in writing to the executive secretary’s decision not to further pursue a complaint, the executive secretary shall submit the complaint to the investigating committee for its consideration.

**4.9(3)** The executive secretary shall report to the investigating committee as necessary concerning actions taken on complaints received by the commission.

**193E—4.10(543B) Investigation by investigating committee.**

**4.10(1)** Upon receipt of a complaint by the investigating committee, the committee shall determine whether a violation has occurred. If the committee determines that the facts presented warrant disciplinary action, the committee shall open a disciplinary case against the licensee. If the investigating committee determines that no disciplinary action is warranted, the committee shall take no further action on the complaint. If the complaint is not pursued by the committee, the complainant shall be informed by letter containing a statement specifying the reasons for rejection.

**4.10(2)** If a disciplinary case is opened, the investigating committee shall examine available information to determine whether there is probable cause to believe a disciplinary violation has occurred which warrants discipline or whether additional information is required before such a determination can be made. If additional information is needed, the committee may assign an investigator to obtain additional information. Upon completion of the investigation, the results of the investigation shall be provided to the committee.

**4.10(3)** Following or during the investigation the investigating committee may take one or more of the following actions:

- a.* Request further investigation.
- b.* Request that the licensee who is the subject of the complaint meet with the investigating committee to informally discuss the allegations.
- c.* Determine that there is no probable cause that a violation has occurred which warrants discipline and close the complaint. Prior to or at the time the complaint is closed, the investigating committee may choose to send a letter to the licensee regarding the conduct alleged in the complaint which may include the committee's recommendations to the licensee. If a letter is sent pursuant to this paragraph, the letter shall not be available for public inspection and shall not constitute disciplinary action by the commission.
- d.* Determine that there is probable cause to believe that a violation has occurred which warrants discipline.
- e.* Determines that there is probable cause to believe that a violation of Iowa Code section 543B.1 has occurred which shall be referred to a court of competent jurisdiction pursuant to Iowa Code section 543B.44.
- f.* Attempt informal settlement of the complaint. If the investigating committee determines that probable cause exists indicating that a law or rule within the jurisdiction of the commission has been violated and that discipline is warranted, the committee shall consider settling the complaint informally. If the investigating committee determines that a satisfactory settlement cannot be reached, the committee may commence a contested case proceeding against the licensee by causing a notice of hearing to be served.
- g.* Stay further action on the complaint. If the investigating committee finds that the complaint is against a licensee whose license has expired or has been revoked, the committee may stay further action on the complaint either prior to or after commencing a contested case proceeding against the licensee. If the proceedings are stayed, the committee shall notify the former licensee of the pending charges.

**4.10(4)** In determining the appropriate action to pursue, the investigating committee shall consider the severity of the violation alleged, the sufficiency of the evidence, the possibility that the problem can be better resolved by other means available to the parties, without commission involvement, the clarity of the laws and rules which support the alleged violation, the clarity of the commission's jurisdiction, whether the violation is likely to reoccur, the record of the licensee and any other factors which are relevant to the committee's decision in a particular case.

**193E—4.11(543B) Informal discussion procedures.** The investigating committee may request that a licensee and the licensee's employing broker attend an informal discussion. The licensee or the employing broker is not required to attend or participate in any informal discussion requested by the investigating committee. The licensee and employing broker are, however, required to inform the committee as to whether they will attend an informal discussion which is requested by the committee.

**4.11(1)** The informal discussion is a part of the committee's investigation of a pending disciplinary case, and facts discussed at the informal discussion may be considered by the commission in the event that the complaint advances to a contested case hearing and those facts are independently introduced into evidence in that proceeding.

**4.11(2)** If the licensee chooses, the licensee may be represented by an attorney at the informal discussion at the expense of the licensee.

**4.11(3)** The informal discussion shall be held in closed session.

**4.11(4)** The committee may seek an informal stipulation or settlement of the case at the time of the informal discussion. If the parties agree to an informal settlement of the case at the time of the informal discussion, a statement of charges shall be filed simultaneously with the settlement document. In the event the committee does not reach a settlement under this subrule, additional settlement rules in this chapter are still applicable.

**4.11(5)** By consenting to participate in an informal discussion, the licensee waives any right of notice and opportunity to participate in any communications between the investigating committee and the prosecuting attorney or commission staff who are involved in investigating the case. This waiver shall be effective until such time as a notice of hearing is filed against the licensee.

**4.11(6)** Members of the investigating committee participating in informal discussions are not disqualified from participating in the adjudication of any contested case proceeding which may be necessary to resolve the complaint.

**193E—4.12(543B) Settlements.**

**4.12(1)** Settlement negotiations may be initiated after a statement of charges is filed. Neither the licensee nor the commission is obligated to utilize this procedure. Settlement negotiations may be initiated by the state of Iowa acting through the prosecuting attorney, by the respondent or by the commission. The chairperson of the commission, or another commission member designated by the chairperson, shall have authority to negotiate on behalf of the commission.

**4.12(2)** If a licensee consents to pursue settlement, the licensee waives any right of notice and opportunity to participate in any communications between the commission chair or the chair's designee and the prosecuting attorney or investigating staff members who are thereafter involved in the settlement negotiations or in presentation of the settlement to the commission.

**4.12(3)** The proposed settlement may be submitted to the full commission by the prosecuting attorney, commission staff, or the commission member involved in the negotiations.

**4.12(4)** The commission shall not consider any settlement negotiation pursuant to this rule until a proposed, written settlement, signed by the licensee, is submitted to the commission for approval.

**4.12(5)** All settlement agreements are subject to the approval of a majority of the full commission. If the commission fails to approve the settlement, the proposed settlement shall be of no force or effect to either party.

**4.12(6)** The settlement discussion by the full commission shall be held in closed session.

**4.12(7)** The commission member who participates in the negotiation of a settlement is not disqualified from participating in the commission's consideration of the proposed settlement or the adjudication of any contested case which may be necessary to resolve the complaint.

**4.12(8)** Following approval of a settlement by the full commission and filing of the settlement document, the settlement document shall be available for public inspection.

**193E—4.13(543B) Refusal to set hearing.** Reasons for refusal to set hearing by the commission may include but are not necessarily limited to the following:

1. Triviality of the allegation.
2. Insufficiency of evidence.
3. Effort to resolve problem on the local level.
4. Lack of clarity of the issue.
5. Lack of jurisdiction.

**193E—4.14(543B) Ruling on the initial inquiry.**

**4.14(1) *Rejection.*** If a determination is made by the commission to reject the case, the complaint shall be returned to the complainant along with a statement specifying the reasons for rejection. A letter of explanation concerning the decision of the commission shall be sent to the respondent.

**4.14(2) *Requirement of further inquiry.*** If determination is made by the commission to order further inquiry, the complaint and recommendations by the investigator(s) shall be returned to the investigator(s) along with an oral statement specifying the information deemed necessary.

**4.14(3) *Acceptance of the case.*** If a determination is made by the commission that probable cause to hold hearing exists, the commission may initiate contested case proceedings. The commission may enter into informal settlement negotiations prior to holding a contested case hearing. As a result of informal settlement, the commission may impose any of the penalties available to it. If informal negotiation is not taken or successful, the commission may proceed with formal disciplinary proceedings through contested case proceedings.

**193E—4.15(543B) Withdrawal or amendment.** A complaint may be amended or withdrawn at any time prior to official notification of the parties and thereafter at the sole discretion of the commission. The commission may choose to pursue a matter even after a complainant has withdrawn.

**193E—4.16(543B) Order for hearing or complaint.** The commission may, upon its own motion or upon receipt of a complaint in writing, issue an order fixing the time and place for hearing. A written notice of hearing, together with a statement of the charges, shall be mailed to the licensee at least 20 days before the hearing by certified mail return receipt requested to the last-known business address of the licensee or may be served as in the manner of original notices. Delivery of personal notice to the licensee or refusal by the licensee to accept certified mailing may constitute commencement of the contested case proceedings.

**193E—4.17(543B) Statement of charges.** The statement of charges shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged and shall be in sufficient detail to enable the efficient preparation of the respondent's defense. The statement of charges shall specify the statute(s) and any rule(s) alleged to have been violated and may also include any additional information which the commission deems appropriate to the proceedings.

**193E—4.18(543B) Notice of hearing.** The notice of hearing shall state:

1. The date, time and place of hearing.
2. A statement that the party may be represented by legal counsel at all stages.
3. A statement of the legal authority and jurisdiction under which the hearing is to be held.
4. A reference to the statutes and rules involved.
5. A short and plain statement of the matter asserted.
6. A statement that the respondent has the right to appear at a hearing and be heard.
7. A statement requiring the respondent to submit an answer, as outlined in rule 4.19(543B).
8. A statement requiring the respondent within the period of ten days after receipt of the notice of hearing to acknowledge receipt of the notice of hearing on the form provided with the notice.
9. A statement requiring the respondent to furnish the commission with a list of potential witnesses, and their current addresses which the respondent intends to have called. The answer required in item 7 and the list of potential witnesses, if any, as required in item 9 shall be provided to the executive secretary no later than ten days prior to the date set for hearing.

This rule is intended to implement Iowa Code section 543B.35 and chapter 272C.

**193E—4.19(543B) Form of answer.** The answer shall be captioned “Before the Iowa Real Estate Commission,” and shall be titled: “ANSWER.” The answer shall contain the following information:

1. The name, address and telephone number of the respondent.
2. Specific statements regarding any or all allegations in the complaint which shall be in the form of admissions, denials, explanations, remarks or statements of mitigating circumstances.
3. Any additional facts or information the respondent deems relevant to the complaint and which may be of assistance in the ultimate determination of the case.

**193E—4.20(543B) Continuances.** A party has no automatic right to a continuance or delay of the commission’s hearing procedure or schedule. However, a party may request a continuance of the executive secretary no later than ten days prior to the date set for hearing. Within ten days of the date set for hearing, no continuances shall be granted except for extraordinary, extenuating or emergency circumstances. The executive secretary shall have power to grant continuances after consultation, if needed, with the chairperson of the commission. A commissioner shall not be contacted in person, by mail or telephone by a party seeking a continuance.

**193E—4.21(543B) Prehearing conference.** The presiding officer, administrative law judge or the executive secretary either on their own motion or at the request of the respondent may hold a prehearing conference. The prehearing conference shall be for the purpose of identifying and premarking exhibits and other documents as well as determining stipulations or other means of limiting the issues of the hearing. Neither the commission nor respondent shall be required to stipulate to any issues but stipulation is encouraged. The prehearing conference, if held, may be done through a telephone conference call, with all parties being involved.

**193E—4.22(543B) Appearance.** The licensee shall have the right to appear in person, and have legal counsel, before the commission at the licensee’s expense.

**193E—4.23(543B) Subpoena powers.** In accordance with Iowa Code section 543B.36, the commission has authority to subpoena persons, books, papers, records and any other real evidence, whether or not privileged or confidential under law, to help it determine whether it should institute a contested case proceeding (hearing). After service of the notice of hearing the following procedures are available to the parties:

1. Commission subpoenas for persons, books, papers, records and other real evidence will be issued to a party or for a party upon request. Application should be made to the executive secretary who shall issue all subpoenas for both parties upon request.
2. Discovery procedures applicable to civil actions are available to the parties in proceedings under these rules.
3. Evidence obtained by subpoena or through discovery shall be admissible at the hearing under 4.29(543B) or by statute.
4. The evidence outlined in Iowa Code section 17A.13(2) where applicable and relevant may be available to a party upon request.

**193E—4.24(543B) Refusal to obey subpoena.** In the event of a refusal to obey a subpoena, the commission may petition the district court for its enforcement.

The presiding officer of a hearing or the administrative law judge may also administer oaths and affirmations, take or order that depositions be taken, and grant immunity to a witness from disciplinary proceedings initiated by the commission which might otherwise result from the testimony to be given by the witness.

**193E—4.25(543B) Failure of respondent to appear.** If a respondent, upon whom a proper notice of hearing has been served, fails to appear in person at the hearing, the commission or administrative law judge may proceed to conduct the hearing and the respondent shall be bound by the results of such hearing to the same extent as if the licensee were present.

**193E—4.26(543B) Record of proceedings.** Oral proceedings shall be recorded either by mechanical or electrical means, or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party at the expense of the requesting party. The recording or stenographic notes of oral proceedings or the transcription thereof shall be filed and maintained in accordance with the provisions of Iowa Code section 17A.12(7). Any party to a proceeding may record, at the party's own expense, stenographically or electronically, any portion or all of the proceedings.

**193E—4.27(543B) Hearings.** A hearing may be conducted before the full commission, or one or more members of the commission, or before an administrative law judge in accordance with Iowa Code section 17A.11.

**4.27(1)** When a hearing is held before the commission, or a small number of commissioners, the commission chairperson or someone designated by the chairperson shall act as the presiding officer. The presiding officer or administrative law judge shall be in control of the proceedings and shall have the authority to administer oaths, to admit or exclude testimony or other evidence and to rule on all motions and objections.

**4.27(2)** The presiding officer and commission members have the right to conduct a direct examination of the testimony of a witness at the time the testimony is given or at a later stage during the proceeding. Direct examination and cross-examination by commission members are subject to objections properly raised in accordance with the rules of evidence noted in subrules 4.29(1) and 4.29(2).

**193E—4.28(543B) Order of proceedings.** Before testimony is presented, the record shall show the identity of any commission members present, the identity of the hearing panel or administrative law judge, the identity of the primary parties and their representatives, and of the fact that all testimony is being recorded. Hearings before the commission or a panel of the commission or before an administrative law judge shall generally be conducted in the following order, subject to modification at the discretion of the commission or of the panel of the commission conducting the proceedings.

1. The presiding officer or designee may read a summary of the charges and answers thereto, and other responsive pleadings filed by the respondent prior to the hearing.

2. The assistant attorney general or other person representing the state or commission interest before the commission shall make a brief opening statement which will include a summary of the charges and the witnesses and documents to support such charges.

3. The respondent or respondents shall each be offered the opportunity to make an opening statement, including the names of any witnesses the respondent(s) desires to call in defense. A respondent may elect to make the opening statement just prior to the presentation of evidence by the respondent.

4. The presentation of evidence on behalf of the public.

5. A summary, at the close of the evidence on behalf of the state or commission, of the case and what was sought to be proven.

6. The presentation of evidence on behalf of the respondent(s).

7. Rebuttal evidence on behalf of the state or commission, if any.

8. Rebuttal evidence on behalf of the respondent(s), if any.

9. Closing arguments first on behalf of the state or commission, then on behalf of the respondent, and then on behalf of the state or commission, if any.

**193E—4.29(543B) Rules of evidence—documentary evidence—official notice.**

**4.29(1)** Irrelevant, immaterial and unduly repetitious evidence should be excluded. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. The commission will ordinarily base its findings upon a preponderance of the evidence, but it shall not be required to do so.

**4.29(2)** Objections to evidentiary offers may be made and shall be noted in the record. Motions and offers to amend the pleadings may also be made at the hearing and shall be noted in the record together with the rulings thereon.

**4.29(3)** Subject to the above requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be submitted in writing in certified form, e.g., affidavit, sworn statements or certified documents.

**4.29(4)** Documentary evidence may be received in the form of copies if the original is not readily available. Documentary evidence may be received in the form of excerpts if the entire document is not relevant. Accurate copies of any document should be made in advance of the hearing, in as far as possible, in sufficient numbers for all members of the commission and shall be furnished to those members of the commission sitting at the hearing and to opposing parties. Upon request, parties shall be given the opportunity to compare the copy with the original, if available.

**4.29(5)** Witnesses at the hearing, or persons whose testimony has been submitted in written form, if available, shall be subject to cross-examination by any party as necessary for a full and true disclosure of the facts.



**4.29(6)** Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the commission. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data, and the parties shall be afforded an opportunity to contest such facts before the decision is announced unless the commission determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

**193E—4.30(543B) Final decision.**

**4.30(1)** When three or more members of the commission preside over the reception of the evidence at the hearing, the commission's decision is a final decision. A finding of guilt or penalty by the commission shall require a majority vote of the entire commission.

**4.30(2)** If the hearing is conducted by fewer than three members of the commission as specified in rule 4.27(543B) or by an administrative law judge, the decision is a proposed decision and subject to the review provisions of rule 4.32(543B).

- a.* A proposed or final decision shall be in writing and shall consist of the following parts:
  - (1) A concise statement of the facts which support the findings of fact.
  - (2) Findings of fact. A party may submit proposed findings of fact and where this is done, the decision shall include a ruling on each proposed finding.
- b.* Conclusions of law which shall be supported by cited authority or reasoned opinion.
- c.* The decision or order which sets forth the action to be taken or the disposition of the case.
- d.* The decision may include any of the following conclusions:
  - (1) That the respondent be exonerated.
  - (2) Revocation of license.
  - (3) Suspension of license until further order of the commission or for a specified period.
  - (4) Nonrenewal of license.
  - (5) Prohibit permanently, until further order of the commission or for a specific period, the engaging in specified procedures, methods or acts.
  - (6) Probation.
  - (7) Require additional education or training.
  - (8) Require reexamination.
  - (9) Order a physical or mental examination with periodic reports to the commission, if deemed necessary.
  - (10) Issue citation and warning.
  - (11) Impose civil penalties not to exceed \$1,000.
  - (12) Such other sanctions allowed by law as may be appropriate.

**193E—4.31(543B) Notification of decision.** As a courtesy the parties will be telephoned, if possible, to advise them of the decision of the commission. All parties to a proceeding hereunder shall be promptly furnished with a copy of any final or proposed decision or order either in person or by certified mail return receipt requested.

**193E—4.32(543B) Proposed decision—appeal to commission—procedures and requirements.**

A proposed decision as defined in rule 4.30(543B) becomes a final decision unless appealed in accordance with the following procedure:

1. A proposed decision may be appealed to the commission by a party to the decision who is adversely affected thereby. An appeal is begun by serving on the executive secretary, either in person or by certified mail, a notice of appeal within 20 days after the service of the proposed decision or order on the appealing party. The appealing party shall be designated “appellant” and all other parties in the contested case proceedings shall be designated “appellee(s)”.

2. Within 20 days after serving a notice of appeal, the appellant shall serve five copies of the exceptions, if any, together with the brief and argument desired by appellant. The appellant shall also furnish copies to each appellee by first-class mail. Any appellee to the appeal shall have 14 days after service of exceptions and brief on the executive secretary to file a responsive brief and argument. Except for the notice of appeal, the above time requirements will be extended by stipulation of the parties and may be extended upon application approved by a member of the commission or executive secretary.

3. Oral argument of the appeal is discretionary but may be required by the commission upon its own motion. At the times designated for filing briefs and arguments either party may request oral argument. If a request for oral argument is granted or required, the executive secretary shall notify all parties of the date, time and place. The commission chairperson or a designated commissioner shall preside at the oral argument and determine the procedural order of the proceedings.

4. The record on appeal shall be the entire record made before the hearing panel or administrative law judge. The commission is not bound by any proposed findings of fact, conclusions of law or order but is free to accept, affirm, modify or reject such proposed findings, conclusions or order. The commission may consider other evidence or information, with notice to all parties, which was not originally presented at the hearing. The commission may give such new evidence or information whatever value or weight the commission desires.

**193E—4.33(543B) Motion for rehearing.** Within 20 days after issuance of a final decision, any party may file an application for a rehearing. The application shall state the specific grounds for rehearing and the relief sought. Within 20 days after issuance of a final decision, any party may file an application for a rehearing upon the commission and all other parties who are not joining in the application. The application shall state the specific grounds for rehearing and the relief sought.

**4.33(1)** Upon a rehearing, the commission shall consider facts not presented in the original proceeding if:

- a. Such facts arose after the original proceeding; or
- b. The party offering such evidence could not reasonably have provided such evidence at the original proceedings; or
- c. The party offering the additional evidence was misled by any party as to the necessity for offering such evidence at the original proceeding, except that this subrule shall not relieve any party of its obligation to control its own evidence and defense.

**4.33(2)** The decision made upon rehearing may incorporate by reference any and all parts of the decision made upon the conclusion of the original proceeding.

**4.33(3)** Notwithstanding the provisions of Iowa Code section 17A.16(2), if the regularly scheduled commission meeting comes beyond the 20 days stated in section 17A.16(2), the commission may, for purposes of rehearing, act through its chairperson to grant or deny applications for rehearing.

**193E—4.34(543B) Final decision—filed with executive secretary.** The final decision of the commission, presiding officer or administrative law judge shall be filed with the executive secretary. A copy of the decision and order shall immediately be sent by certified mail return receipt requested to the licensee's last-known post office address or may be served as in the manner of original notices upon the licensee.

**193E—4.35(543B) Judicial review and appeal.** Judicial review of the commission's action may be sought in accordance with the Iowa administrative procedure Act, from and after the date of the commission's order.

**193E—4.36(543B) Ex parte communications—bias.** Ex parte communications and other matters tending to prejudice a contested hearing proceeding are prohibited by Iowa Code section 17A.17. In keeping with this provision the following minimal requirements are applicable:

**4.36(1)** Individuals assigned to render a proposed or final decision, to make findings of fact or conclusions of law, shall not communicate, directly or indirectly, in connection with any issue of fact or law, with any person or party, except upon notice and opportunity for all parties to participate. Such individuals may, however, communicate with members of the commission and its secretary and may have the aid and advice of persons other than those with a personal interest in, or those engaged in prosecuting or advocating in, either the case under consideration or a pending factually related case involving the same parties. In any case, where it becomes necessary to communicate with a party on matters noted above, notice shall be given to all parties and a date, time and place set for a discussion of the matter.

**4.36(2)** Parties or their representatives in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact or law in that contested case, with individuals assigned to render a proposed or final decision or to make findings of fact and conclusions of law in that contested case, except upon notice and opportunity for all parties to participate. Any such prohibited communication shall be brought to the attention of the commission chairperson so it can be included in the record of the case.

**4.36(3)** Any party to a contested hearing proceeding may file an affidavit alleging personal bias or other disqualification of any individual participating in the making of a proposed or final decision. The assertion as to disqualification will be ruled upon as a part of the record of the case.

**4.36(4)** For a violation of this rule, the commission may hand down a decision adverse to the violating party; may suspend, censure or reprimand; and may reprimand or dismiss commission staff members.

**193E—4.37(543B) Publication of decisions.** Final decisions of the commission relating to disciplinary procedures may be transmitted to the appropriate professional association(s), other states, and news media.

**193E—4.38(543B) License denial.** Any request to have a hearing before the commission concerning the denial of a license shall be submitted by the applicant in writing to the executive secretary by certified mail, return receipt requested, within 30 days of the mailing of a notice of denial of a license.

This rule is intended to implement Iowa Code sections 543B.19, 543B.35 and 543B.41.

**193E—4.39(543B) Hearing on license denial.** At a hearing held by the commission after an applicant has been denied a license, the burden of presenting evidence and information or documents to support the applicant's position shall be the responsibility of the applicant. The applicant shall have the burden of going forward and the commission, after a hearing on the license denial, shall use its experience, expertise, specialized knowledge and past history of the applicant when considering the application. The commission shall not be required to grant a license to an applicant whose license has been previously revoked but the commission shall be required to state, in writing, reasons for denial of a license.

**193E—4.40(543B) Violations for which civil penalties may be imposed.**

**4.40(1)** Engaging in activities requiring a license when license is inactive.

**4.40(2)** Failing to maintain a place of business.

**4.40(3)** Improper care and custody of license:

- a. Failing to properly display license(s).
- b. Failing to return license in a timely manner (72 hours).
- c. Failing to notify associate when license is returned.
- d. Failing to provide mailing address of associate when license is returned.

**4.40(4)** Failing to inform commission and remit required fees if appropriate:

- a. When changing business address (5 working days).
- b. When changing status (5 working days).
- c. When changing form of firm (5 working days).
- d. When opening a trust account by not filing a consent to examine for the account.
- e. When changing residence address or mailing address.
- f. When independently obtained errors and omissions insurance status, coverage or provider changes.

**4.40(5)** Maintaining inadequate transaction records such as:

- a. Failing to maintain a general ledger.
- b. Failing to maintain individual account ledgers.
- c. Failing to retain records on file.

**4.40(6)** Improper trust account and closing procedures:

- a. Failing to deposit funds as required.
- b. Disbursing trust funds prior to closing without written authorization.
- c. Withholding earnest money unlawfully when the transaction fails to consummate.
- d. Failing to obtain escrow agreement for undisbursed funds.
- e. Failing to remit and account for interest on closing statements.
- f. Computing closing statements improperly.
- g. Failing to provide closing statements.
- h. Retaining excess personal funds in the trust account.
- i. Failing as a salesperson or broker associate to immediately turn funds over to the broker.
- j. Failing to deposit trust funds in interest-bearing account in accordance with Iowa Code section 543B.46.

**543B.46.**  
k. Failing to account for and remit to the state accrued interest due in accordance with Iowa Code section 543B.46.

**4.40(7)** Failing to immediately present offer.

**4.40(8)** Advertising without identifying broker or clearly indicating advertisement is by a licensee.

**4.40(9)** Failing to provide information to the commission when requested relative to a complaint (14 calendar days).

**4.40(10)** Failing to obtain all signatures required on contracts or to obtain signatures or initials of all parties to changes in a contract.

**4.40(11)** Placing a sign on property without consent, or failure to remove a sign when requested.

**4.40(12)** Failing to furnish a progress report when requested.

**4.40(13)** Failing by a broker to supervise salespersons or broker associates.

**4.40(14)** Failing by a broker associate or salesperson to keep the employing broker informed.

**4.40(15)** Issuing an insufficient funds check to the commission for any reason or to anyone else in the individual's capacity as a real estate licensee.

**4.40(16)** Issuing an insufficient funds check on the broker's trust account.

**4.40(17)** Engaging in conduct which constitutes a tying arrangement as prohibited by these rules.

**4.40(18)** Failing to inform clients of real estate brokerage firm the date the firm will cease to be in business and the effect upon sellers' listing agreements.

**4.40(19)** Violating any of the remaining provisions in 193E—Chapters 1 to 6 inclusive, which have not heretofore been specified in this rule.

This rule is intended to implement Iowa Code sections 543B.46 and 272C.3(2) "e."

**193E—4.41(543B) Recovery of hearing fees and expenses.** The commission may assess the licensee with certain fees and expenses relating to a disciplinary hearing, only if the commission finds the licensee did violate Iowa Code chapter 543B or administrative rules of the commission.

**4.41(1)** The commission may assess an amount up to the following costs under this rule:

*a.* For conducting a disciplinary hearing, an amount not to exceed \$75.

*b.* All applicable costs involved in the transcript including, but not limited to, the services of the court reporter at the hearing, transcription, duplication, and postage or delivery costs.

*c.* All normally accepted witness expenses and fee for a hearing or the taking of depositions. This shall include, but not be limited to, the cost of an expert witness and the cost involved in telephone testimony.

*d.* All normally applicable costs involved in depositions including, but not limited to, the services of the court reporter recording the deposition, transcription, duplication, and postage or delivery costs.

*e.* The commission, at its discretion, may assess an appropriate amount up to but not exceeding specific fees established by this subrule and the actual normally acceptable cost, fee or expenses involved.

**4.41(2)** Fees, costs, and expenses assessed pursuant to this rule shall be calculated by the executive secretary or other designated person and may be entered into the commission disciplinary order specifying the amount to be reimbursed and the time period in which the amount assessed must be paid by the licensee.

*a.* When it is impractical or not possible to include the assessment and time period in the disciplinary order in a timely manner, or the expenditures occur after the disciplinary order, the commission, by majority vote of members present, may assess the amount to be reimbursed and the time period in which payment is to be made by the licensee.

*b.* If the assessment and time period are not included in the disciplinary order, the commission shall have to the end of the sixth month after the date the state of Iowa paid the expenditure(s) to assess the licensee for such expenditure by commission action.

**4.41(3)** Fees, costs, and expenses assessed by the commission pursuant to this rule shall be allocated to the expenditure category of the licensing commission in which the disciplinary procedure or hearing was incurred. The fees, costs and expenses shall be considered repayment receipts as defined in Iowa Code section 8.2.

**4.41(4)** The failure to comply with payment of a commission-assessed cost, fee, or expense, within the time specified, shall be considered prima facie evidence of a violation of Iowa Code sections 543B.29(3) and 543B.34(2).

However, no action may be taken against the licensee without a hearing as provided in Iowa Code section 543B.35.

**193E—4.42(252J) Certificates of noncompliance.** The commission shall suspend or revoke a certificate of registration upon the receipt of a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures in Iowa Code Supplement chapter 252J. In addition to the procedures set forth in chapter 252J, this rule shall apply.

**4.42(1)** The notice required by section 252J.8 shall be served upon the registrant by restricted certified mail, return receipt requested, or personal service in accordance with Rules of Civil Procedure 56.1. Alternatively, the registrant may accept service personally or through authorized counsel.

**4.42(2)** The effective date of revocation or suspension of a certificate of registration, as specified in the notice required by section 252J.8, shall be 60 days following service of the notice upon the registrant.

**4.42(3)** The commission's executive secretary is authorized to prepare and serve the notice required by section 252J.8, and is directed to notify the registrant that the certificate of registration will be suspended, unless the registration is already suspended on other grounds. In the event a registration is on suspension, the executive secretary shall notify the registrant of the commission's intention to revoke the certificate of registration.

**4.42(4)** Registrants shall keep the commission informed of all court actions and all child support recovery unit actions taken under or in connection with chapter 252J and shall provide the commission copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

**4.42(5)** All commission fees for license renewal or reinstatement must be paid by registrants before a certificate of registration will be renewed or reinstated after the commission has suspended or revoked a license pursuant to chapter 252J.

**4.42(6)** In the event a registrant files a timely district court action following service of a commission notice pursuant to sections 252J.8 and 252J.9, the commission shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of revocation or suspension, the commission shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

**4.42(7)** The commission shall notify the registrant in writing through regular first-class mail, or such other means as the commission deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a certificate of registration, and shall similarly notify the registrant when the registration is reinstated following the commission's receipt of a withdrawal of the certificate of noncompliance.

**193E—4.43(272C) Impaired licensee review committee.** Pursuant to the authority of Iowa Code section 272C.3(1)“k,” the Iowa real estate commission establishes the impaired licensee review committee.

**4.43(1) Definitions.** The following definitions are applicable wherever such terminology is used in the rules regarding the impaired licensee review committee.

“*Committee*” means the impaired licensee review committee.

“*Contract*” means the written document establishing the terms for participation in the impaired licensee program prepared by the committee.

“*Impairment*” means an inability to practice with reasonable safety and skill as a result of alcohol or drug abuse, dependency, or addiction, or any neuropsychological or physical disorder or disability.

“*Licensee*” means a person licensed under Iowa Code chapter 543B.

“*Self-report*” means the licensee’s providing written or oral notification to the commission that the licensee has been or may be diagnosed as having an impairment prior to the commission’s receiving a complaint or report alleging the same from a second party.

**4.43(2) Purpose.** The impaired licensee review committee evaluates, assists, monitors, and, as necessary, makes reports to the commission on the recovery or rehabilitation of practitioners who self-report impairments.

**4.43(3) Composition of the committee.** The chairperson of the commission shall appoint the members of the committee. The membership of the committee includes, but is not limited to:

- a. One licensee, who holds a license to practice pursuant to Iowa Code chapter 543B;
- b. One public member of the Iowa real estate commission;
- c. One licensed professional with expertise in substance abuse/addiction treatment programs.

**4.43(4) Eligibility.** To be eligible for participation in the impaired licensee recovery program, a licensee must meet all of the following criteria:

- a. The licensee must self-report an impairment or suspected impairment directly to the office of the commission.
- b. The licensee must not have engaged in the unlawful diversion or distribution of controlled substances or illegal substances;
- c. At the time of the self-report, the licensee must not already be under commission order for an impairment or any other violation of the laws and rules governing the practice of the profession;
- d. The licensee has not caused harm or injury to a client;
- e. There is currently no commission investigation of the licensee that the committee determines concerns serious matters related to the ability to practice with reasonable safety and skill or in accordance with the accepted standards of care;
- f. The licensee has not been subject to a civil or criminal sanction, or ordered to make reparations or remuneration by a government or regulatory authority of the United States, this or any other state or territory or foreign nation for actions that the committee determines to be serious infractions of the laws, administrative rules, or professional ethics related to the practice of real estate;
- g. The licensee has provided truthful information and fully cooperated with the commission or committee.

**4.43(5) Meetings.** The committee shall meet as necessary in order to review licensee compliance, develop consent agreements for new referrals, and determine eligibility for continued monitoring.

**4.43(6) *Terms of participation.*** A licensee shall agree to comply with the terms for participation in the impaired licensee program established in a contract. Conditions placed upon the licensee and the duration of the monitoring period shall be established by the committee and communicated to the licensee in writing.

**4.43(7) *Noncompliance.*** Failure to comply with the provisions of the agreement shall require the committee to make immediate referral of the matter to the commission for purpose of disciplinary action.

**4.43(8) *Practice restrictions.*** The committee may impose restrictions on the licensee's practice as a term of the contract until such time as it receives a report from an approved evaluator that the licensee is capable of practicing with reasonable safety and skill. As a condition of participating in the program, a licensee is required to agree to restricted practice in accordance with the terms specified in the contract. In the event that the licensee refuses to agree to or comply with the restrictions established in the contract, the committee shall refer the licensee to the commission for appropriate action.

**4.43(9) *Limitations.*** The committee establishes the terms and monitors a participant's compliance with the program specified in the contract. The committee is not responsible for participants who fail to comply with the terms of or successfully complete the impaired licensee program. Participation in the program under the auspices of the committee shall not relieve the commission of any duties and shall not divest the commission of any authority or jurisdiction otherwise provided. Any violation of the statutes or rules governing the practice of the licensee's profession by a participant shall be referred to the commission for appropriate action.

**4.43(10) *Confidentiality.*** The committee is subject to the provisions governing confidentiality established in Iowa Code section 272C.6. Accordingly, information in the possession of the commission or the committee about practitioners in the program shall not be disclosed to the public. Participation in the impaired licensee program under the auspices of the committee is not a matter of public record.

**193E—4.44(77GA,ch1081) Suspension or revocation of a license—student loan.** The commission shall suspend or revoke a license upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in 1998 Iowa Acts, chapter 1081. In addition to the provisions contained in those sections, this rule shall apply.

**4.44(1)** The notice required by 1998 Iowa Acts, chapter 1081, section 6, shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the licensee may accept service personally or through authorized counsel.

**4.44(2)** The effective date of revocation or suspension of a license, as specified in the notice required by 1998 Iowa Acts, chapter 1081, section 6, shall be 60 days following service of the notice upon the licensee.

**4.44(3)** The commission's executive secretary is authorized to prepare and serve the notice required by 1998 Iowa Acts, chapter 1081, section 6, and is directed to notify the licensee that the license will be suspended, unless the license is already suspended on other grounds. In the event a license is on suspension, the executive secretary shall notify the licensee of the commission's intention to revoke the license.

**4.44(4)** Licensees shall keep the commission informed of all court actions and all college student aid commission actions taken under or in connection with Iowa Code chapter 261 and shall provide the commission copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to 1998 Iowa Acts, chapter 1081, section 7, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the college student aid commission.



**4.44(5)** All commission fees required for license renewal or license reinstatement must be paid by the licensee and all continuing education requirements must be met before a license will be renewed or reinstated after the commission has suspended or revoked a license pursuant to Iowa Code chapter 261.

**4.44(6)** In the event a licensee timely files a district court action following service of a commission notice pursuant to 1998 Iowa Acts, chapter 1081, sections 6 and 7, the commission shall continue with the intended action described in the notice until the commission's receipt of a court order lifting the stay, dismissing the action, or otherwise directing the commission to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license, the commission shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

**4.44(7)** The commission shall notify the licensee or applicant in writing through regular first-class mail, or such other means as the commission deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a license, and shall similarly notify the licensee or applicant when the license is reinstated following the commission's receipt of a withdrawal of the certificate of noncompliance.

These rules are intended to implement Iowa Code chapters 543B and 272C and Iowa Code section 252J.8.

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